Carlon, A Lamson & Sessions Company *and* Richard A. Ohse

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL–CIO *and* Richard A. Ohse

Cement, Lime, Gypsum and Allied Workers Lodge D465, Division of International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL–CIO *and* Richard A. Ohse. Cases 17–CA–15845–1, 17–CB–4129–1, and 17–CB–4129–2

July 26, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On September 2, 1992, Administrative Law Judge Steven M. Charno issued the attached decision. The General Counsel and the Charging Party filed exceptions and supporting briefs. The Charging Party filed a brief answering the General Counsel's exceptions, and the Respondent International Union filed a brief opposing the exceptions to the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judges' rulings, findings, and conclusions as modified and to adopt the recommended Order as modified and set forth in full below.[1]

The Respondents were parties to a collective-bargaining agreement that was effective from May 28, 1991, to May 29, 1994. The agreement contained a union-security clause[2] and a dues-checkoff provision.

Charging Party Richard Ohse was employed by the Employer on June 6, 1977. On his first day at work, Ohse signed a dues-checkoff authorization in favor of the Local Union. About June 24, 1991,[3] Ohse advised the Employer and the Local that he wished to resign his union membership and pay only those dues that constituted his pro rata share of the costs of collective bargaining, contract administration, and grievance adjustment. About July 1, the Employer's office manager, Ron Gassaway, told Ohse that the dues deduction would stop. However, 2 weeks later, Gassaway told Ohse that the Employer had a contractual commitment to the Unions that required it to continue to deduct Ohse's full dues. Between June 24 and November 30, the Employer did not receive a request from the Local or the International Union to reduce Ohse's dues. The Employer continued to deduct full union dues from Ohse's pay through November 30, and the Local and International continued to accept them. The Unions never notified Ohse of his right under *Communications Workers v. Beck,* 487 U.S. 735 (1988), to object to paying dues for union expenditures for nonrepresentational purposes.

1. The judge found that the union-security clause in the Respondents' collective-bargaining agreement was void ab initio because its "member in good standing" requirement overstated the obligations that lawfully could be imposed on bargaining unit employees. Specifically, the judge found that because the clause was unclear and ambiguous and did not inform employees that their actual contractual obligations were limited to the payment of periodic dues and initiation fees, the Respondent Employer violated Section 8(a)(3) and (1) of the Act by maintaining and enforcing this invalid provision, and the Respondent Unions violated Section 8(b)(1)(A) by maintaining it. No party excepted to these findings or to the recommended remedy.[4]

After the judge issued his decision, the Supreme Court held, in *Marquez v. Screen Actors Guild,* 119 S.Ct. 292 (1998), that unions and employers do not violate the Act by negotiating union-security provisions requiring that unit employees become or remain members of the union, in good standing, as a condition of employment. Rather, the Court concluded that, by tracking the "membership" language in Section 8(a)(3), a union-security clause incorporates all the refinements and rights that have become associated with that *language under NLRB v. General Motors Corp.,* 373 U.S. 734 (1963), and *Beck,* supra. See also *United Paperworkers Local 987 (Sun Chemical Corp.),* 327 NLRB 1011 (1999). Thus, although we are adopting, pro forma, the judge's finding that the union-security provision was unlawful, we do so only because no exceptions have been filed to that finding.

[1] The Charging Party has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[2] That clause, art. IV, "Union Security" provided:

> Section I. UNION MEMBERSHIP: It shall be a condition of employment that all employees of the Employer covered by this agreement who are members of the Union in good standing on the effective date of this agreement shall remain members in good standing, and those who are not members on the effective date of this agreement shall, after ninety (90) calendar days of service with the Company, become and remain members in good standing in the Union. It shall also be a condition of employment that all employees covered by this agreement and hired on or after its effective date shall on the ninetieth (90th) calendar day following the beginning of such employment become and remain members in good standing with the Union. All of the above shall be consistent with law.

[3] All dates refer to 1991 unless otherwise indicated.

[4] The judge further found that the Unions' maintenance of this 1991–1994 union-security clause did not violate Sec. 8(b)(2) because there was no evidence that the Unions took affirmative action to enforce the clause. See generally *Electronic Workers IUE Local 663 (Gulton Electro Voice II)*, 276 NLRB 1043 (1985). There were no exceptions on this point. In par. 10 of his conclusions of law, however, the judge inadvertently included an 8(b)(2) "enforcement" violation. We have modified the conclusions of law to delete this finding.

2. The judge found that, in the absence of any procedure that would have allowed Ohse to pay only for the Unions' representational expenditures, Ohse's resignation and objection revoked his authorization to deduct full union dues as a matter of law. He, therefore, found that no dues were owed under these circumstances and that, by continuing to withhold, receive, and accept Ohse's full dues after his resignation, the Respondents violated Section 8(a)(1) and (3) and Section 8(b)(1)(A) and (2). There were no exceptions to these findings, which we adopt pro forma.

3. In his recommended remedy, the judge ordered the Respondents to rescind the union-security clause, cease enforcing it, and remove it from the 1991–1994 collective-bargaining agreement, and to refrain from bargaining for or maintaining such a clause in any successor agreement without informing employees that their only obligation under such a clause would be to pay membership dues and initiation fees. He further ordered the Respondents to reimburse Ohse for all dues paid following his June 1991 resignation. The judge also extended this remedy to "all similarly situated nonmembers who objected to the payment of their dues for non-representational activities on or after April 8, 1991," the date 6 months prior to the filing of the charges. We find it necessary to modify the judge's proposed remedy in several respects.

Although we have adopted pro forma, in the absence of exceptions, the judge's finding that the union-security clause in the Respondents' collective-bargaining agreement was invalid ab initio, we reiterate that the Supreme Court has now authoritatively held to the contrary. We are, thus, in the unusual position of having to devise an appropriate remedy for conduct that was not actually illegal. However, the Board "has wide discretion" in its choice of remedy, guided by the express direction in Section 10(c) of the Act that the relief ordered is to be such "as will effectuate the policies of this Act."[5] The relief granted "is to be adapted to the situation which calls for redress."[6]

In these unusual circumstances, we shall not order the Respondents to cease and desist from enforcing their 1991–1994 union-security provision, or from bargaining for or maintaining that clause in another collective-bargaining agreement. Further, we shall not order the Respondents to rescind the union-security provision and expunge it from the 1991–1994 contract, which, in any event, has already expired.

Nor shall we order the Respondents to refund all dues and fees paid by Ohse after he resigned his union membership or to reimburse other *Beck* objectors for all of the dues and fees they paid during the time period covered by the complaint. Such a remedy would be appropriate only if the union-security clause were actually invalid, and it was not. The Board has repeatedly held that even unions that unlawfully fail to inform employees of their *Beck* rights are still entitled to collect dues from them for expenses related to representational activities, and has ordered reimbursement only of dues collected above those amounts. See *Paperworkers Local 1033 (Weyerhaeuser Paper Co.),* 320 NLRB 349 fn. 4 (1995), revd. on other grounds sub nom. *Buzenius v. NLRB,* 124 F.3d 788 (6th Cir. 1997), vacated 119 S.Ct. 442 (1998*); Paperworkers Local 987 (Sun Chemical Corp. of Michigan),* supra. 327 NLRB at 1012. Consequently, we shall order the Respondents to reimburse Ohse only for the portion of the dues collected from him after he resigned and objected that were spent for nonrepresentational activities, with interest computed as provided in *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

Because full dues reimbursement is normally ordered when union-security clauses are found to be unlawful,[7] our dissenting colleague would order reimbursement of all dues. Contrary to our colleague, however, the clause at issue here was *not* in fact unlawful. Thus, to order full dues reimbursement, as our colleague would do, would provide an unwarranted windfall to unit employees whose rights were not violated by an unlawful clause.[8] This we decline to do.

We do, however, find it appropriate in these circumstances, as a remedial matter, to order the Respondent Unions to inform all unit employees of their *Beck* and *General Motors* rights as set forth in *California Saw & Knife Works,* 320 NLRB 224, 233 (1995), enfd. sub nom. *Machinists v. NLRB,* 133 F.3d 1012 (7th Cir. 1998), cert. denied sub nom. *Strang v. NLRB,* 119 S.Ct. 47 (1998).[9] We also find it appropriate to order the Unions to provide Ohse with the information required to be furnished to objectors under *California Saw,* 320 NLRB at 233.

Further, we shall order the Unions to notify in writing those employees whom they initially sought to obligate to pay dues or fees under the union-security clause after May 28, 1991, of their right to elect nonmember status

[5] *Virginia Electric & Power Co. v. NLRB,* 319 U.S. 533, 539 (1943), quoting 29 U.S. 160(c).

[6] *NLRB v. MacKay Radio & Telegraph Co.,* 304 U.S. 333, 348 (1939). In devising an appropriate remedy, the Board is not limited by the parties' failure to request or oppose any specific remedy. *Nabco Corp.,* 266 NLRB 687 fn. 1 (1983); *Keller Aluminum Chairs,* 165 NLRB 1011 fn. 1 (1967). See also *Shepard v. NLRB,* 459 U.S. 344, 352 (1983) (Act does not require the Board "to reflexively order that which a complaining party may regard as 'complete relief' for every unfair labor practice").

[7] This remedy, however, is extended only to employees who have joined or remained members of a union involuntarily, because of the requirements of the unlawful union-security clause. See *Carpenters Local 60 v. NLRB,* 365 U.S. 651 (1961).

[8] This is no less true even though, as our colleague notes, dues were deducted from Ohse's pay via checkoff. The method by which dues were paid is irrelevant to a determination of the amount of dues to be refunded.

[9] The Unions have effectively conceded that they did not give *Beck* or *General Motors* notice to unit employees.

and to make *Beck* objections with respect to one or more of the accounting periods covered by the complaint. With respect to any such employees who, with reasonable promptness after receiving their notices, elect nonmember status and file *Beck* objections with respect to any of those periods, we shall order that the Respondent Unions, in the compliance stage of the proceeding, process their objections, nunc pro tunc, as they would otherwise have done, in accordance with the principles of *California Saw,* supra. The Respondent Unions shall then be required to reimburse these objecting nonmember employees for the reduction in their dues and fees, if any, for nonrepresentational activities that occurred during the accounting period or periods covered by the complaint in which they have objected, with interest as computed under *New Horizons for the Retarded,* supra. See *Paperworkers Local 987 (Sun Chemical Corp.),* supra, 327 NLRB No. 177, slip op. at 2–3.[10]

ORDER

The National Labor Relations Board orders that

A. The Respondent Employer, Carlon, A Lamson & Sessions Company, Oklahoma City, Oklahoma, its officers, agents, successors and assigns shall

1. Cease and desist from

(a) Continuing to deduct union dues for nonrepresentational purposes from the pay of nonmember bargaining unit employees after they file objections under *Communications Workers v. Beck,* 487 U.S. 735 (1988).

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Jointly and severally with the Respondent Local and the Respondent International, reimburse Richard Ohse, with interest, for union dues paid by him for nonrepresentational activities under the union-security clause since he resigned from the Union and filed a *Beck* objection on June 24, 1991.

(b) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back dues to be paid to Ohse.

(c) Within 14 days after service by the Region, post at its Oklahoma City, Oklahoma facility copies of the attached notice marked "Appendix A."[11] Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent Employer's authorized representative, shall be posted by the Respondent Employer immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent Employer to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent Employer has gone out of business or closed the facility involved in these proceedings, the Respondent Employer shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent Employer at any time since April 8, 1991.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

B. The Respondent Local, Cement, Lime, Gypsum and Allied Workers Lodge D465, Division of International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL–CIO, and the Respondent International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL–CIO, their officers, agents and representatives, shall

1. Cease and desist from

(a) Charging nonmember bargaining unit employees for nonrepresentational activities after they file *Beck* objections.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify all bargaining unit employees in writing of their rights under *NLRB v. General Motors Corp.,* 373 U.S. 734 (1963), to be and remain nonmembers and of the rights of nonmembers under *Beck* to object to paying for union activities not germane to the Respondent Unions' duties as bargaining agents and to obtain a reduction in dues and fees for such activities. In addition, the notice must include sufficient information to enable the employees to intelligently decide whether to object, as well as a description of any internal union procedures for filing objections.

(b) For each accounting period since June 24, 1991, provide Richard Ohse with information setting forth the Respondent Unions' major categories of expenditures for the previous accounting year and distinguishing between representational and nonrepresentational functions, and inform him of his right to challenge those figures.

(c) Jointly and severally with the Respondent Employer, reimburse Ohse, with interest, for union dues

[10] We shall also modify the recommended Order in accordance with the Board's decisions in *Indian Hills Care Center,* 321 NLRB 144 (1996), and *Excel Container, Inc.,* 325 NLRB No. 14 (1997).

[11] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

paid by him for nonrepresentational activities under the contractual union-security clause since he resigned from the Union and filed a *Beck* objection on June 24, 1991.

(d) Notify in writing those employees whom the Respondent Unions initially sought to obligate to pay dues or fees under the union-security clause after May 28, 1991, of their right to elect nonmember status and to make *Beck* objections with respect to one or more of the accounting periods covered by the complaint.

(e) With respect to any employees who, with reasonable promptness after receiving the notices prescribed in paragraph 2(d), elect nonmember status and file *Beck* objections, process their objections in the manner set forth in part 3 of the Board's decision.

(f) Reimburse, with interest, any nonmember bargaining unit employees who file *Beck* objections with the Respondent Unions for any dues and fees exacted from them for nonrepresentational activities, in the manner set forth in part 3 of the Board's decision.

(g) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all records necessary to analyze the amounts of back dues to be paid to Ohse and other nonmember bargaining unit employees covered by paragraph 2(f).

(h) Post at their business offices and meeting halls copies of the attached notice marked "Appendix B."[12] Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent Unions' authorized representatives, shall be posted by the Respondent Unions immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to their members and other employees in the bargaining unit are customarily posted. Reasonable steps shall be taken by the Respondent Local and Respondent International to ensure that the notices are not altered, defaced, or covered by any other material.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region at testing to the steps that the Respondent Unions have taken to comply.

MEMBER HURTGEN, dissenting in part.

I agree with my colleagues in all respects, except that I would order a full dues reimbursement.

My colleagues acknowledge that (1) the union-security clause was found by the judge to be unlawful; and (2) there were no exceptions to this finding. Thus, there is a pro forma Board finding to this effect.

The normal Board remedy for an *unlawful* union-security clause is reimbursement of full dues.[1] By contrast, where a union-security clause is *lawful*, but there are *Beck* violations, the remedy is the one imposed here by my colleagues. As noted, this case involves an unlawful union-security clause, and yet my colleagues give a *Beck* remedy. In short, my colleagues' remedy does not fit the violation found.

The reason given for this disparity between violation and remedy is the fact that, under *Marquez,*[2] the union-security clause would not be unlawful. However, this fact does not contradict the point (acknowledged by my colleagues) that the clause *in this case* has been declared unlawful. Further, even after *Marquez* issued, the Respondents did not seek to alter the judge's remedy. In these circumstances, I would not depart from the Board remedy that is traditionally imposed for an unlawful union-security clause.[3]

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT deduct dues for nonrepresentational purposes from your pay after you have resigned from the Union and filed an objection under *Communications Workers v. Beck,* 487 U.S. 735 (1988).

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights guaranteed you by Section 7 of the Act.

WE WILL, jointly and severally with the Local and International Unions, reimburse Richard Ohse, with interest, for union dues paid by him for nonrepresentational activities under the union-security clause since he resigned from the Union and filed a *Beck* objection on June 24, 1991.

CARLON, A LAMSON & SESSIONS COMPANY

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE

[12] See fn. 11, supra.

[1] My colleagues acknowledge this point.

[2] *Marquez v. Screen Actors Guild,* 119 S.Ct. 292 (1998).

[3] There is also a pro forma finding that the Charging Party's check-off authorization was revoked as a matter of law on June 24, 1991. Notwithstanding this, full dues continued to be deducted. This is another basis for full dues reimbursement.

NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT charge nonmember bargaining unit employees for nonrepresentational activities after they file objections under *Communications Workers v. Beck,* 487 U.S. 735 (1988).

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL notify all bargaining unit employees in writing of their right under *NLRB v. General Motors Corp.,* 373 U.S. 734 (1963), to be and remain nonmembers and of the rights of nonmembers under *Beck* to object to paying for union activities not germane to our duties as bargaining agent and to obtain a reduction in dues and fees for such activities. In addition, the notice will include sufficient information to enable the employees to intelligently decide whether to object, as well as a description of any internal union procedures for filing objections.

WE WILL, for each accounting period since June 24, 1991, provide Richard Ohse with information setting forth our major categories of expenditures for the previous accounting year and distinguishing between representational and nonrepresentational functions, and inform him of his right to challenge those figures.

WE WILL, jointly and severally with the Employer, reimburse Richard Ohse, with interest, for union dues paid by him for nonrepresentational activities under the union-security clause since he resigned from the Union and filed a *Beck* objection on June 24, 1991.

WE WILL notify in writing those employees whom we initially sought to obligate to pay dues or fees under the union-security clause on or after April 8, 1991, of their right to elect nonmember status and to make *Beck* objections with respect to one or more of the accounting periods covered by the complaint.

WE WILL process the *Beck* objections of any employees whom we initially sought to obligate to pay dues or fees under the union-security clause after May 28, 1991, who elect nonmember status and file objections with reasonable promptness after receiving notice of their right to so object.

WE WILL reimburse any nonmember bargaining unit employees who file *Beck* objections with us for any dues and fees exacted from them for nonrepresentational activities, for each accounting period since April 8, 1991.

CEMENT, LIME, GYPSUM AND ALLIED WORKERS LODGE D465, DIVISION OF INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS & HELPERS, AFL–CIO

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS & HELPERS, AFL–CIO

Stephen E. Wamser, Esq., for the General Counsel.
Michael J. Stapp, Esq. (Blake & Uhlig, P.A.), of Kansas City, Kansas, for Respondents Local and International.
W. James Young, Esq., of Springfield, Virginia, for the Charging Party.

DECISION

STEVEN M. CHARNO, Administrative Law Judge. In response to charges timely filed, a consolidated complaint was issued on January 10, 1992, alleging that Carlon, a Lamson & Sessions Company (the Employer), the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL–CIO (the International) and the Cement, Lime, Gypsum and Allied Workers Lodge D465, Division of International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL–CIO (the Local) (collectively Respondents), violated the National Labor Relations Act (the Act). Respondents' answers denied the commission of any unfair labor practice.

A hearing was held before me in Oklahoma City, Oklahoma, on June 22, 1992. Briefs were thereafter filed by the General Counsel, the Charging Party, the International, and the Local under due date of August 10, 1992.

FINDINGS OF FACT

I. JURISDICTION

The Employer is a corporation engaged in the manufacture of PVC pipe with an office and place of business in Oklahoma City, Oklahoma. During the year ending December 31, 1991, the Employer, in the course of its operations in Oklahoma, sold and shipped goods valued in excess of $50,000 to points outside the State. It is admitted, and I find, that the Employer is an employer engaged in commerce within the meaning of the Act.

The International and the Local are admitted to be, and I find are, labor organizations within the meaning of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES[1]

The International and the Local are the exclusive collective-bargaining representative of the following employees of the Employer (unit):

All hourly paid employees at Respondent Employer's facility, excluding office clerical employees, professional employees,

[1] Except as indicated, the findings of fact set forth below are based are based on Respondents' admissions or stipulations.

guards, watchmen and supervisors as defined in the National Labor Relations Act as certified in Case No. 16–RC–4242.

The three Respondents are parties to a collective-bargaining agreement which is effective by its terms from May 28, 1991, to May 29, 1994. Article IV of that agreement contains the following language:

> SECTION I. UNION MEMBERSHIP: It shall be a condition of employment that all employees of the Employer covered by this agreement who are members of the Union in good standing on the effective date of this agreement shall remain members in good standing, and those who are not members on the effective date of this agreement shall, after ninety (90) calendar days of service with the Company, become and remain members in good standing in the Union. It shall also be a condition of employment that all employees covered by this agreement and hired on or after its effective date shall on the ninetieth (90th) calendar day following the beginning of such employment become and remain members in good standing with the Union. All of the above shall be consistent with law.

At no time since this language became effective has the International or the Local asked the Employer to modify article IV. At no time material did the International or Local maintain a procedure whereby dues-paying nonmembers employed in the unit might (1) object to expenditures of dues for activities unrelated to collective bargaining, contract administration, or grievance adjustment, or (2) secure a reduction of their dues so as to exclude sums expended for such unrelated activities.[2]

Richard A. Ohse has been continuously employed by the Employer since June 6, 1977. On his first day of employment, Ohse signed a dues-deduction authorization in favor of the Local. On or about June 24, 1991, Ohse sent identical letters by certified mail to the Employer and the Local stating that he wished to resign his union membership and to limit his dues to an amount which represented his pro rata share of the costs of collective bargaining, contract administration, and grievance adjustment. The Local received Ohse's letter on June 27; the Employer, on July 1.

Around July 1, Ohse was told by Ron Gassaway, the Employer's office manager, that the deduction of union dues would be stopped; but 2 weeks later Gassaway told Ohse that the Employer's contractual commitment to the other Respondents required the ongoing deduction of full union dues. Shortly after hse sent the letters, he had a brief conversation with Jim Filipo, the Local's vice president, who asked whether Ohse and another employee would be willing to talk to a union representative; the other employee responded that the matter was being handled by legal counsel and the conversation ended. Between the time he mailed the letters and November 30, 1991, Ohse had no other conversations with union officials, and he never received any written communications from the International or the Local concerning his right to refuse to pay for expenses unrelated to representational activities.[3]

Between June 24 and November 30, 1991, (1) the Employer did not receive a request from the International or the Local to reduce Ohse's union dues by a percentage equal to any expenditure for nonrepresentational activities; (2) the Employer deducted full union dues from Ohse's pay and remitted them to the International and the Local; and (3) the union dues deducted from Ohse's pay were received and accepted by the International and the Local. Since December 1, 1991, the Employer has not deducted any union dues from Ohse's pay.

A. The Union-Security Clause

The complaint alleges that Respondents' maintenance and enforcement of the union-security clause set forth in article IV of their collective-bargaining agreement is violative of the Act. It is well settled that an employer and a union may agree to make union membership a condition of employment so long as that membership is limited to the payment of initiation fees and dues. E.g., *NLRB v. General Motors,* 373 U.S. 734, 742 (1963). On brief, the General Counsel contends that the instant requirement of membership "in good standing'' is unclear and ambiguous, does not inform employees of their actual obligations under the collective-bargaining agreement, and is therefore an unlawful restraint on those employees' rights under Section 7 of the Act. The Charging Party argues on brief that a requirement of membership "in good standing'' is a requirement of "formal'' union membership and is per se invalid. Although the International and the Local denied that the maintenance of article IV of the collective-bargaining agreement was an unfair labor practice, neither addressed the matter on brief.

The existing state of the law on the question of whether a union-security clause must articulate the limitations on membership as a condition of employment is unclear. In *Keystone Coat, Apron & Towel Supply Co.,* 121 NLRB 880, 885 (1958), the Board approved a union-security clause which required union membership "in good standing.'' Subsequently, in *Paragon Products,* 134 NLRB 662, 666 (1961), the Board appeared to alter its position when it indicated that it was unlawful for a union-security clause to "require as a condition of continued employment the payment of sums of money other than 'periodic dues and initiation fees uniformly required.''' As argued by the General Counsel, the requirement that an employee be a member in good standing clearly suggests that the employee cannot be delinquent in any respect. Thus, an employee who owes money for fines and assessments, which are payments clearly in excess of dues and initiation fees, would be subject to discharge for failure to pay. For the foregoing reasons, I conclude that the union-security clause here at issue is sufficiently ambiguous to violate Section 8(a)(1) and (3) and Section 8(b)(1)(A) of the Act. Accordingly, I shall order the Respondents to rescind and cease to maintain article IV of their collective-bargaining agreement.[4]

[2] This finding is based on (1) the credited, uncontroverted testimony of Richard Ohse that he never saw a posting setting forth such procedures at the Employer's premises nor received any written communication concerning such procedures from the International or the Local, (2) the stipulations that the Local has no copies of written communications between the International or the Local, on the one hand, and unit employees or the Employer, on the other hand, concerning procedures whereby nonmember dues-paying unit employees might object to expenditures on nonrepresentational activities or might secure a reduction of dues so as to exclude such expenditures, (3) the stipulations that the Employer has not received notice from the other Respondents concerning the right of Ohse or of any other nonmember dues-paying unit employee to object to expenditures for nonrepresentational activities, and (4) the stipulated failure of the International and the Local to take timely action to reduce Ohse's dues after receiving his request to do so.

[3] The findings in this paragraph are based on Ohse's credited, uncontroverted testimony.

[4] Because the relief sought by the General Counsel and the Charging Party is identical, I do not find it necessary to further consider the latter's arguments concerning the union-security clause in this case.

The General Counsel also contends that Respondents' conduct in maintaining the invalid clause is violative of Section 8(b)(2) of the Act. The cases cited by the General Counsel in support of this contention all concerned affirmative enforcement action by a union in addition to simply maintaining an invalid union-security clause in a collective-bargaining agreement. See *Electronic Workers IUE Local 663 (Gulton Electro Voice II),* 276 NLRB 1043, 1045 (1985); *Wolf Trap Foundation,* 289 NLRB 760 (1988); *Preston Trucking Co.,* 236 NLRB 464, 465–466 (1978), enfd. 610 F.2d 991 (D.C. Cir. 1979). It is uncontested that the International and the Local took no action to enforce the union-security clause beyond maintaining that clause without modification in the collective-bargaining agreement with the Employer. I therefore reject the General Counsel's argument on this point.

B. The Deduction and Acceptance of Dues

Unions are not permitted, over the objection of a dues-paying nonmember employee, to expend funds collected pursuant to a union-security clause on activities unrelated to collective bargaining, contract administration, or grievance adjustment. *Communications Workers v. Beck,* 487 U.S. 735 (1988). The record is clear that, at the time Ohse resigned from the Local and objected to any expenditures for nonrepresentational purposes, the International and the Local did not have in effect any procedure to permit a nonmember employee to secure a reduction of dues so as to exclude such expenditures. The General Counsel and the Charging Party argue on brief that (1) no dues were owed under these circumstances; (2) the Employer's failure to stop deducting full union dues between June 24 and November 30 violated Section 8(a)(1) and (3) of the Act; (3) the acceptance these dues by the Local and the International violated Section 8(B)(1)(A) and (2) of the Act; and (4) Ohse should be made whole for the sums deducted by the Employer and accepted by the Local and International. Respondent did not treat this issue on brief.

The dues-deduction authorization signed by Ohse allowed the Employer to deduct and the Local and International to receive full union dues. In the absence of any procedure which would allow Ohse to pay only for the Local's and International's representational expenditures, his resignation and objection acted to revoke his authorization to deduct full union dues as a matter of law. Accordingly, I shall find the violations argued by the General Counsel and the Charging Party and shall impose the remedy which they seek.

C. Failure to Establish a Beck Procedure

The complaint also alleges that, "since on or about June 24, 1991, Respondent [International] and Respondent Local have failed and refused to give Ohse any initial notice of his right to object after resignation from union membership to payment of dues for nonrepresentational activities.'' The Local and the International correctly observe on brief that Ohse's June 24 letters demonstrate that he was fully aware at the time he wrote them of his rights as a dues-paying nonmember. The futility of notifying Ohse of his right to object after June 24 is beyond question, and I conclude that the Local and International did not restrain Ohse's exercise of his Section 7 rights by failing to provide such notice.

On brief, the General Counsel contends that the failure of the Local and the International to establish a procedure whereby dues-paying objecting nonmembers would be apprised of the exact amounts expended on nonrepresentational activities is also a violation of Section 8(b)(1)(A) of the Act. In support of this contention, the General Counsel argues that the existence of a union-security clause creates a duty on the part of the union to inform objecting nonmembers of the exact sums spent on nonrepresentational activities so that the objectors may assess their obligations under the union-security clause. Because the union-security clause under consideration here was invalid ab initio, the Local and International had no duty to adopt a procedure to give notice to objectors concerning expenditures on nonrepresentational activities. Accordingly, I conclude that the failure to establish such a procedure did not violate Section 8(b)(1)(A) of the Act.

CONCLUSIONS OF LAW

1. The Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The International is a labor organization within the meaning of Section 2(5) of the Act.

3. The Local is a labor organization within the meaning of Section 2(5) of the Act.

4. All hourly paid employees at the Employer's facility, excluding office clerical employees, professional employees, guards, watchmen and supervisors as defined in the Act, as certified in Case 16–RC–4242, constitute a unit appropriate for the purpose of collective bargaining.

5. Since on or about June 24, 1991, Ohse's union dues-deduction authorization has been revoked by operation of law.

6. By deducting full union dues from Ohse's pay between June 24 and November 30, 1991, the Employer has engaged in an unfair labor practice in violation of Section 8(a)(1) and (3) of the Act.

7. By maintaining and enforcing article IV of the collective-bargaining agreement since May 28, 1991, the Employer has engaged in an unfair labor practice in violation of Section 8(a)(1) and (3) of the Act.

8. By failing to reduce the union dues deducted from Ohse's pay between June 24 and November 30, 1991, the Local and the International have engaged in an unfair labor practice in violation of Section 8(b)(1)(A) of the Act.

9. By causing the Employer to deduct full union dues from Ohse's pay between June 24 and November 30, 1991, despite revocation of his dues deduction authorization by operation of law, the Local, and the International have engaged in an unfair labor practice in violation of Section 8(b)(1)(A) and (2) of the Act.

10. By maintaining and enforcing article IV of the collective-bargaining agreement since May 28, 1991, the Local and the International have engaged and are engaging in an unfair labor practice in violation of Section 8(b)(1)(A) and (2) of the Act.

11. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Inasmuch as Respondents have engaged in unfair labor practices, I shall order them to cease those practices and to take affirmative action in order to effectuate the purposes of the Act. Such affirmative action shall include recision of the union-security clause in the currently effective collective-bargaining agreement and making whole Ohse and all similarly situated nonmembers who objected to the payment of their dues for nonrepresentational activities on or after April 8, 1991, a date 6 months prior to the filing of the charge in this case. The amounts due these objecting nonmembers shall include interest as computed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

[Recommended Order omitted from publication.]